Supreme Court, U.S.
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No. 96-1586

(3)

In The
Supreme Court of the United States

October Term, 1996

MANFRED KRUGER and
CRISTINA KRUGER,
Petitioners,

vs.

SONIC RESTAURANTS, INC.,
Respondent

On Petition For A Writ Of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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15 pp

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case.

I. Was The Issue Of The Criminal Nature Of The Termination Agreement Raised In The Lower Court Proceedings?

In the Petition for Writ of Certiorari, Petitioners stated that the issue of the criminal nature of the Termination Agreement had been brought before the district court. Respondent stated in its Brief in Opposition to Petition for Writ of Certiorari that Petitioners "have not and cannot cite the Court to any presentation" of the issue of the criminal nature of the Termination Agreement to the district court for consideration. (Respondent's Brief in Opposition to Petition for Writ of Certiorari p. 6, ¶1). The following paragraphs reveal the presentation of the issue made to the lower courts.

At the trial level in this litigation, the Krugers responded to Respondent's Motion for Summary Judgment by filing with the court a "Motion to Strike Plaintiff's Motion for Summary Judgment." Based on the content of the document, the district court considered it a response to the Motion for Summary

Judgment. (See Appendix D of Petition for Writ of Certiorari, p. 31a, ¶1). The Krugers "Motion to Strike Plaintiff's Motion for Summary Judgment" has been included in relevant part, and attached to this reply as Appendix A. The very first argument made by the Krugers in response to the summary judgment motion was that the Termination Agreement was created for the purpose of criminal tax evasion. (Appendix A, p. 2a). Further, the Krugers claim that the Termination Agreement sought to characterize the Krugers as independent contractors rather than employees for income tax purposes. (Appendix A, p. 5a-6a). Since the district court considered the Krugers motion as a responsive pleading to the motion for summary judgment, the issue of illegality of the Termination Agreement was preserved for appeal.

The Krugers raised a number of issues at the appellate level. The Krugers were representing themselves *pro se* in this litigation, and were going through the difficult hardships of coping with depression, a miscarriage, loss of employment,

permanent disability, and the inability to receive workers compensation. Faced with a much more knowledgeable legal opponent, the Krugers argued everything they could think of, although unbeknownst to them some of what they argued had little legal relevance. Nevertheless, they once again raised the point to the appellate court that the Termination Agreement was illegal. Attached as Appendix B is the Krugers opening brief to the Tenth Circuit in relevant part. The Krugers specifically pointed out to the Tenth Circuit that the Termination Agreement upheld and enforced by the district court injunction would force the Krugers to commit federal crimes. (Appendix B at p. 8a). Similar to the district court, the Tenth Circuit did not address this argument in its decision. However, the issue was raised by the Krugers.

This Reply is limited to the new issue raised by Respondent. While Petitioners certainly disagree with Respondents legal and factual contentions, Petitioners will not dispute those matters in this brief. Suffice it to say, in Petitioners' opinion, that

Respondents legal arguments and factual allegations have about as much merit as the contention that Petitioners "have not and cannot cite the Court to any presentation" of the issue of the criminal nature of the Termination Agreement.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

EXCERPT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DATED FEBRUARY 8, 1996

IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

SONIC RESTAURANTS, INC., Plaintiff	)	
	)	Case No.
v.	)	
	)	CIV-95-0796-C
MANFRED KRUGER and CRISTINA KRUGER, Defendants	)	

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff's Objection of Extension of Time and Plaintiff's Motion for Summary Judgment filed February 01, 1996 with the Court just show the intention of the Plaintiff to win this case under any

circumstances, hopefully on technicalities since the Defendants are unable to retain legal counsel to properly defend themselves against the accusations of the Plaintiff, and the unlimited resources of the Plaintiff. (Exhibit #171.)

1. This is not a case of a simple contract dispute, but a case of employer tax evasion on a monumental scope (Exhibits #151, #151-A, #152, and #152-A) and false promises and deception as a standard mode of business operation by S.R.I. and Sonic Corp. (Exhibits #159, #160, #161, #170, #171 and #175.)

2. This is also a case of grand deception of false promises of business opportunities to Manfred Kruger and many other victims (Exhibits #18, #159, #160, and #161) and of a conspiracy across state lines by S.R.I. to defraud the Krugers, tax collectors and the workmen's comp. insurance carrier.

3. This is also a case of workmen's comp insurance premium fraud by Sonic Restaurants (S.R.I.) by not reporting employees (Manfred Kruger and others) as employees and by not reporting tipped employees' tips (Exhibit #151-A) as additional wages

to avoid higher payment of employer taxes and higher workmen's comp insurance premiums. The above avoidance and evasion of higher state and federal employer taxes and the avoidance and evasion of higher workmen's comp insurance premiums is also a common practice by Sonic Franchisees, as witnessed by at least two witnesses who worked for Sonic Franchisees besides S.R.I. These witnesses are Dave Barber and Paul Fitzke. (Exhibits #159 and #160.)

[...]

5. The Plaintiff's objection for Extension of Time for the Defendants to retain legal counsel and interference just shows the desperate situation of the Plaintiff because countless exhibits of evidence, mostly generated by S.R.I., shows that Manfred Kruger was an employee and not a contractor and, therefore, the Termination Agreement of 5/02/95 is a fraud and S.R.I.'s own documents as evidence show that. For example, Exhibits #21 to #27 all show in Paragraph 2 that Manfred Kruger was an employee,

because it states, "earned and future wages and bonuses." It does not say contractor fees or invoices. In Paragraph 5 C it states, "The maker's (M. Kruger) termination of employment." It does not say M. Kruger's termination as a contractor. Exhibits #21 to #27 are evidence and a prime example of S.R.I.'s deception. While on April 24, 1995, Manfred Kruger was an employee and S.R.I. addressed Manfred Kruger in those legal documents as an employee, S.R.I. later decided, after M. Kruger proposed all kinds of action against S.R.I. to get his final wages, (Exhibits #162 and 163 dated 4/26/95, Exhibits #164 and #167 dated 4/29/95, Exhibit #165 dated 4/29/95, and Exhibit #166 dated 5/01/95) that Manfred Kruger was a contractor. Now, when evaluating Exhibits #21 to #27, one must remember that those exhibits and documents were drafted and prepared for final signature by Manfred Kruger and S.R.I. by the Legal Department of Sonic Corporation. That same Legal Department also drafted that 5/02/95 Termination of Outside Contractor Agreement and that Legal Department employs at least two full-time in-house attorneys with the staff and resources of a large

company; a legal staff that has prepared hundreds of contracts and more than 1,200 Franchise Agreements. The Legal Department of Sonic has a demonstrated superior knowledge of writing legal contracts and documents, and Exhibits #21 to #27 are a prime example. how come Manfred Kruger (the maker) in those documents is referred to as an employee with "earned and future wages and bonuses" and "the maker's termination of employment voluntary or involuntary?" How come in Exhibit #77, S.R.I.'s documents show a guaranteed bonus (wages), while Exhibits #40 to #47 show Manfred Kruger with 0% ownership in any Sonic Restaurant he supervised as an Area Supervisor (S.R.I.'s title: Supervising Partner.) There was no partnership or ownership. No where in the above documents/exhibits does S.R.I. talk about contractor, contractor fees, contractor invoices, etc. There is no single document prior to 4/27/95 (the firing date of Manfred Kruger) that refers to a contractor status of Manfred Kruger, but there are many S.R.I. documents that show Manfred Kruger as an employee. The reason was that Manfred Kruger's employment was only - repeat, only treated as a

defacto partner/business owner/contractor for tax purposes only so S.R.I. could financially gain from that, while for all other purposes and facts, Manfred Kruger was an employee. S.R.I., for obvious reasons, got the best of two worlds - the tax savings (evasion) for treating Manfred Kruger and many others as non-employees when it came to employer tax matters and workmen's comp insurance premiums, while when it came to day-by-day operations, treating Manfred Kruger and many others as employees, as S.R.I.'s own documents show, so S.R.I. could exercise control and authority, which S.R.I. did with any employee as any employer does. Even in day-by-day accounting matters, Exhibits #89, #91, #93, #94, #97, #99 and #100, S.R.I.'s own evidence shoes Manfred Kruger as an employee, because he was an employee. And, the most important fact is that there is no document, no contract or agreement, and no witness prior to 4/27/95, the termination date of Manfred Kruger, that shows any outside contractor status, while the statements of three different witnesses show the evidence that S.R.I. had control over Manfred Kruger

and Manfred Kruger was an employee (Exhibits #159, #160 and #161.) [...]

[...]

APPENDIX B

EXCERPTS OF APPELLANT'S OPENING BRIEF DATED JULY 10, 1996

Statement of Facts Relevant to the Issues Presented for Review, §2 (B), p. 3:

"The evidence also shows that S.R.I. forced the Krugers into an unconscionable contract in violation of public policy and contrary to facts and events. While Manfred Kruger was an employee, S.R.I. demanded that he was an 'outside contractor.'"

Statement of Facts Relevant to the Issues Presented for Review, §2 (D), p. 4:

"The Judgment of the District Court of May 29, 1996, is a retroactive, Court-ordered falsification of facts, events and evidence and requires Manfred Kruger to openly lie about his employment with S.R.I. to governmental agencies in pending cases with the I.R.S., the North Carolina Unemployment Commission, and the Industrial Commission of North Carolina. This is Court-ordered obstruction of justice, and two years of my life are erased by Court order."